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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/664,588	09/18/2000	Jaime Vargas	032405-003	4754

33109 7590 06/13/2003

CARDICA, INC.  
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EXAMINER
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DAVIS, DANIEL J

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 06/13/2003

24

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No. 09/664,588	Applicant(s) VARGAS ET AL.	
	Examiner D Jacob Davis	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on RCE 5/16/03.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 38-60,64-72 and 76-84 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 38,43-48,50-60,64-72 and 76-84 is/are rejected.
- 7) ☒ Claim(s) 39-42 and 49 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>23</u> . | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on May 16, 2003 has been entered.

### ***Continuity***

A preliminary amendment to the specification dated 9-18-00 includes a statement of priority to 09/314,278, "which claims priority to U.S. Application No. 09/132,711." A review of the 09/314,278, now U.S. Patent No. 6,428,550, does not include a reference to priority to 09/132,711 on the face of the patent, in a continuity statement in specification, or in a certificate of correction and thus does not contain a specific reference to the earlier filed application as required by 35 U.S.C. 120. See also MPEP 201.11. The priority of the present application stops with application 09/314,278. Currently, no priority is granted to application 09/132,711.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 38, 43-46, and 50-59 are rejected under 35 U.S.C. 102(e) as being anticipated by Suyker et al. (US 6,485,496).

The embodiment disclosed in Figs. 25-27 anticipates claims 38, 45, 46 and 53-59. Suyker discloses a unitary anastomosis device deployment system comprising a handle 29, 35, a holder tube 32, and an expander 35. The holder tube is "attached" to the handle 35 since they are interdependently engaged. The distal end of the holder tube 32 is also capable of holding a graft vessel. As illustrated, the expander 5 is in the form of a wedge that slides under the holder tube to expand the holder tube and the anastomosis device 1. In this manner the expander is positioned within the holder tube and slides with respect to the holder tube. After actuation of the expander, it may be reverted to its original position. The handle, along with the entire device, may be rotated about an axis.

The embodiment disclosed in Figs. 28-30 anticipates claims 38, 45-46 and 50-59. Suyker discloses a handle 40,44, a holder tube 37, and an expander 42,44. The holder tube is attached to the handle in that they are intimately engaged. The distal end of the holder tube is capable of holding a graft vessel. The deployment device further comprises hooks or fingers 43 (Fig. 30) and a groove 46.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 103 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 47, 48, 60, 64-72 and 76-84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suyker in view of Gifford, III et al. (US 5,695,504). In Figs. 28-30, Suyker discloses a first member 37, a second member 42,44, and a handle (proximal portions of elements 40,44). However, he fails to disclose that the handle may be rotated to move the expander or the holder tube. (Since the two elements move relative to one another, movement of one inherently results in the movement of the other). Nevertheless, Gifford (Figs. 4-5E) discloses an anastomosis deployment device wherein the rotation of a handle rotates threadedly engaged tubes relative to one another. As one of the tubes is rotated, both move laterally relative to one another resulting in a crimped anastomosis device. The threaded rotational advancement enables greater

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precision and force during deployment. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Suyker deployment device as taught by Gifford to add threads between the tubes 40 and 37, and between 37 and 44, to advance the device with more precision and force.

***Allowable Subject Matter***

Claims 39-42 and 49 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Vargas et al. (US 6,428,550).


Any inquiry concerning this communication or earlier communications from the examiner should be directed to D Jacob Davis whose telephone number is (703) 305-1232. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on (703) 308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

  
DJD

June 4, 2003

  
Michael J. Milano  
Supervisory Primary Examiner  
AU 3731